

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KATHRYN BAUMAN RUBENSTEIN	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	1:07cv798-MHT
	)	
BETTY JO BAUMAN, et al.,	)	
	)	
Defendants.	)	

**MOTION TO DISMISS**  
**OF DEFENDANT, G. DAVID JOHNSTON**

COMES NOW the defendant, G. David Johnston, ("Johnston"), by and through its undersigned attorney, and moves the Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss this action against Johnston, and as grounds therefor submits the following:

1. The Federal Rules of Civil Procedure embody the concept of liberalized "notice pleading"; i.e., that a complaint need contain only a statement calculated to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512, 122 S.Ct. 992,998, 152 L.Ed.2d 1 (2002); *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99,102, 21 Law 2<sup>nd</sup> 861 (1957). As to Johnston, Plaintiff's Complaint fails to meet this minimum requirement.

2. On September 4, 2007, Plaintiff filed her original Complaint naming Johnston as a defendant, but she failed to allege a cause of action in substance against Johnston.

3. On September 10, 2007, Plaintiff filed her First Amended Complaint making a general allegation, without specificity, that Johnston, among other named defendants, "conspired to defraud and deny Plaintiff her civil rights, including due process, in Houston County Circuit Case

No. CV02-5063 and the subsequent appeal before the Alabama Court of Civil Appeals and the Alabama Supreme Court.”

4. Though not specifically cited, Plaintiff is presumably alleging violation of Federal Section 1983. Plaintiff has to make a *prima facie* case that the act or omission alleged deprived Plaintiff of a right, privilege or immunity to which she is entitled under the Constitution or laws of the United States and that said act or omission was done by the person acting under color of law. *Marshall County Board of Education v. Marshall*, 992 F.2d 1171, 1174-1175 (11<sup>th</sup> Cir. 1994).

5. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a plaintiff make a short and plain statement of a claim showing entitlement to relief. See, *Hamilton v. Allen-Bradley Co.*, 217 F.3d 1321, 1325 (11<sup>th</sup> Cir.2000) (“[T]he form of the complaint is insignificant, even if it fails to categorize correctly the legal theory giving rise to the claim, **so long as the complaint alleges the facts on which relief can be granted.**”); and *Roe v. Aware Woman Center for Choice, Inc.*, 253 F.2d 678, 683-684 (11<sup>th</sup> Cir.2001) ([W]hile notice pleading may not require that the pleader allege a ‘specific fact’ to cover every element or allege ‘with precision’ each element of a claim, **it is still necessary that a complaint ‘contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.’**”).

6. An examination of the allegations set forth in Plaintiff’s “Causes of Action” reveals that the Plaintiff alleges no specific facts as to the alleged fraud perpetrated upon her by Johnston and the other named defendants nor any facts which meet the criteria for prosecuting a Section 1983 action. Thus, Plaintiff’s Complaint fails to satisfy the even the minimal standard set by Rule 8(a)(2) insofar as this Defendant is concerned.

7. Rule 8(a)(3) requires that a complaint also contain “a demand for judgment for the relief the pleader seeks.” See, *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1161 (11<sup>th</sup> Cir.1993)

(“This requirement is not arduous - ‘any concise statement identifying the remedies and the parties against whom relief is sought will be sufficient,’ citing CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §1255 at 366 (2d ed. 1990)).

8. Again, Plaintiff’s “Prayer for Relief” in the original Complaint makes no demand for relief as to Johnston or even a reference to Johnston. Plaintiff’s general demand for damages in her original Complaint “against the Defendants” is insufficient to satisfy the requirement of Rule 8(a)(3), particularly since Johnston is not one of the “Defendants” identified in her “Causes of Action.”

9. Plaintiff also seeks a declaratory judgment that Defendants violated the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Though interwoven with the Section 1983 allegations, there are no facts to support her allegations.

10. Plaintiff has become a vexatious litigant, filing numerous frivolous and meritless lawsuits in state and federal courts against attorneys, judges, law enforcement officers and anyone who testifies or makes an appearance in or presides over any of the actions which she files. The case at bar is another example of costly litigation brought without merit and with complete disregard for the integrity of the court system. Johnston intends to seek attorney’s fees and costs if the Court grants this Motion to Dismiss.

11. In ruling on a Fed.R.Civ.P. Rule 12(b)(6) motion, “[d]ismissal is appropriate where it is clear the plaintiff can prove no set of facts in support of the claims in the complaint.” *Glover v. Liggett Group, Inc.*, 459 F.3d 1304, 1308 (11<sup>th</sup> Cir. 2006). In this case, because the Plaintiff did not plead any facts in support of a viable claim against Johnston or request any relief against Johnston, she failed to comply with the requirements of Fed.R.Civ.P. 8(a) and her Complaint is fatally flawed. Unquestionably, this Motion to dismiss Johnston as a defendant in this case pursuant to Fed.R.Civ.P. 12(b)(6) for Plaintiff’s failure to state a claim against Johnston is due to be granted.

Respectfully submitted this 21st day of September, 2007.

/S/ William W. Hinesley  
William W. Hinesley  
(ASB-4423-E65W)

Attorney for G. David Johnston

OF COUNSEL:

JOHNSTON, HINESLEY, FLOWERS, CLENNEY & TURNER, P.C.  
291 North Oates Street  
Post Office Box 2246  
Dothan, Alabama 36302  
Telephone: (334) 793-1115  
Facsimile: (334) 793-6603

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/EMF system which will serve notification of such filing on the following:

None

I further certify that I have served the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed:

Ms. Kathryn Bauman Rubenstein  
Post Office Box 2243  
Dothan, Alabama 36302

PeoplesSouth Bank  
109 East Church Street  
Columbia, Alabama 36319

Barbara Kamensky  
6500-4 Green Island Drive  
Columbus, GA 31904

Alan Kamensky  
111 Bay Avenue  
3<sup>rd</sup> Floor  
Columbus, GA 31901

Marilyn Granger  
P.O. Box 488  
Bryson City, NC 28713

Wayne Granger  
P.O. Box 488  
Bryson City, NC 28713

Granger Limited  
P.O. Box 488  
Bryson City, NC 28713

Marie Bauman White  
108 Lucy Lane  
Dothan, AL 36303



Lexa Dowling, Esq.  
P.O. Box 119  
Dothan, AL 36302

Joel Weatherford, Esq.  
Farmer, Price, Hornsby & Weatherford  
P.O. Drawer 2228  
Dothan, AL 36302

Don Bennett, Esq.  
P.O. Box 1392  
Dothan, AL 36302

Brian Bickhaus  
3201 Ross Clark Circle  
Dothan, AL 36303

Pat Black  
3201 Ross Clark Circle  
Dothan, AL 36303

Deep South Development  
P.O. Box 1392  
Dothan, AL 36302

Nanette Pitcher  
P.O. Box 56  
Dothan, AL 36302

Pitcher & Associates  
P.O. Box 56  
Dothan, AL 36302

Mike Conway, Esq.  
360 N. Oates Street  
Dothan, AL 36303

Tommy Scarborough, Esq.  
119 S. Foster Street  
Dothan, AL 36301

Jere Segrest, Esq.  
P.O. Box 1469  
Dothan, AL 36302

Dianne Ream  
1133 W. Main Street  
Dothan, AL 36301

D. Ream Properties  
1133 W. Main Street  
Dothan, AL 36301

Ross Kennedy  
101 Executive Park Drive  
Dothan, AL 36303

Faye Ferrell, M.D.  
114 E. Troy Street  
Dothan, AL 36301

Doug McKeown, Ph.D.  
114 E. Troy Street  
Dothan, AL 36301

Wallace Cooley  
6130 Eddins Road  
Dothan, AL 36303

Tom Zeigenfelder  
1142 Appian Way  
Dothan, AL 36303

Zeigooley, Inc.  
6130 Eddins Road  
Dothan, AL 36303

Arthur Medley, Esq.  
114 N. Oates Street  
Dothan, AL 36303

Margaret Johnson  
Houston County DHR  
3201 Ross Clark Circle, S.E.  
Dothan, AL 36301

Houston County DHR  
3201 Ross Clark Circle, S.E.  
Dothan, AL 36301

CB&T  
901 N. Boll Weevil Circle  
Enterprise, AL 36330

Richard Fox  
Capital City Bank  
P.O. Box 900  
Tallahassee, FL 32302

Boyd Horn  
403 Live Oak Trail  
Dothan, AL 36305

Carl E. Jones, Jr.  
1510 Smolian Place  
Birmingham, AL 35205

D. Bryan Jordan  
417 20<sup>th</sup> Street  
Birmingham, AL 36202

Robert Birmingham  
Regions Bank  
8 Commerce Street  
Montgomery, AL 36104

Anne Chandler  
P.O. Box 692  
Dothan, AL 36302

Fairfax Nabers  
3300 Dell Road  
Birmingham, AL 35223

Judge Larry K. Anderson  
114 North Oates Street  
Dothan, AL 36303

Sandra K. Anderson  
1111 Hillbrook Road  
Dothan, AL 36303

Drayton Nabers, Esq.  
3300 Dell Road  
Birmingham, AL 35223

Judge Bernard Smithart  
Bullock County Courthouse  
217 North Prairie  
Union Springs, AL 36809

Elizabeth Smithart, Esq.  
101 Conecuh Avenue W.  
Union Springs, AL 36809

Dale Segrest, Esq.  
P.O. Box 780791  
Tallassee, AL 36078

Mrs. Dale Segrest  
606 Camellia Drive  
Tallassee, AL 36078

Carla Woodall  
Houston County Circuit Clerk  
114 N. Oates Street  
Dothan, AL 36303

Sandra Pittman  
Houston County Court  
114 N. Oates Street  
Dothan, AL 36303

Officer Joiner  
Houston County Sheriff Dept.  
144 N. Oates Street  
Dothan, AL 36303

Officer Ivey  
Houston County Sheriff Dept  
144 N. Oates Street  
Dothan, AL 36303

James Hamilton, Esq.  
621 S. Hull Street  
Montgomery, AL 36104

Officer Kirksey  
Houston County Sheriff Dept  
144 N. Oates Street  
Dothan, AL 36303

Richard Ramsey III, Esq.  
256 Honeysuckle Road  
Suite 26  
Dothan, AL 36305

Sheriff Andy R. Hughes  
Houston County Sheriff Dept  
144 N. Oates Street  
Dothan, AL 36303

Judy Byrd  
407 Drake Drive  
Dothan, AL 36305

Farmer, Farmer & Malone, P.A.  
112 West Troy Street  
P.O. Drawer 668  
Dothan, AL 36302

/S/ William W. Hinesley  
Of Counsel